114-668

VOL. 3.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~482~~ 165

CALVIN AMORY STEVENS

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 16, 1881.

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

[In Equity].

CALVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds issued to the MOBILE & OHIO RAILWAY COMPANY,

against

THE MOBILE & OHIO RAILROAD COMPANY.

To the Honorable the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Western District of Tennessee:

The petition of John T. Terry and Eugene Kelly restpectfully shows u nto your Honors:

That your petitioners are owners and holders of internal Improvement Bonds of Tennessee, issued on account of the Mobile and Ohio Railroad Company, for the construction and equipment of said road.

Your petitioners' said bonds are identified and

5 numbered according to the description in the bill In the above suit, and have the like number of overdue and unpaid coupons attached thereto. The schedule hereto attached and prayed to be taken as a part of this petition exhibits their ownership and holdings of said bonds.

Your petitioners are likewise members of the Committee of Tennessee Bondholders, representing thirty-six owners and holders of Internal Improvement Bonds of Tennessee issued to the Mobile and
6 Ohio Railroad Company, owning and holding two hundred and four bonds issued to said company by the State of Tennessee.

Your petitioners desire to unite in the prosecution of the bill herein and to be joined as co-complainants according to the frame of the suit and the course and practice of this Court, with leave to amend the titles and formal allegations of the bill to conform to this petition. A copy of said amendment is hereto attached.

7 And your petitioners accordingly pray for the foregoing relief and such other order as may be appropriate in the premises.

EDWARD L. ANDREWS,
Solicitor and of counsel for Petitioners.

UNITED STATES OF AMERICA.

8 SOUTHERN DISTRICT OF NEW YORK.

On this 19th day of April, 1880, before me personnally appeared Eugene Kelly and John T. Terry, who, being duly and severally sworn, says each for himself that the matters and things stated in the foregoing petition are true so far as the same are stated of his own knowledge, and so far as stated

on information and belief he believes them to be true. 9

EUGENE KELLY.
JOHN T. TERRY.

Subscribed and sworn to before me this 19th day of April, 1880.

EDWARD J. CRAMER,
Notary Public,
N. Y. County.

10

Order.

On the foregoing verified petition and on motion of Edward L. Andrews, solicitor for complainants,

It is ordered that Eugene Kelly and John T. Terry be, and they are hereby admitted as co-complainants in the above suit, and the formal amendments attached to the said petition are hereby 11 allowed.

We hereby consent to the entry of the above order.

WRIGHT, FOLKES & WRIGHT,
Solicitors for Defendants.

Amendments to Bill in Equity.

12

On the 27th line of the 17th page after the word "Tennessee," at the end of the paragraph insert:

"Your orator, Eugene Kelly, is the owner and holder of nine of said bonds, and the same are of like description with those of your orator, Stevens, above set forth.

Your orator, John T. Terry, is the owner and

holder of one of said bonds, which is similar in all respects to the bonds above described."

On the first line of the next paragraph after the above amendment and after the word "orators," insert "Stevens, Kelly and Terry," and after the words "likewise" on the same line insert the word "respectively." After the word "bonds" on the second line of the same paragraph insert the words "alleged to belong to them respectively."

On the 27th line of the 17th page, after the word "Tennessee" at the end of the paragraph, insert the following: "The said bonds are numbered and identified respectively as follows: Nine belonging to Eugene Kelly, numbered 4953, 4954, 5047, 5628, 5786, 5787, 5906, 4955 and 4956, and are white bonds series B. One belonging to John T. Terry numbered 1874, and is a white bond, series B."

At the end of the word orator wherever it occurs in the bill add the letter "S," and after the name Stevens add the following: "Eugene Kelly and John T. Terry."

Make the pronoun and verb to which the word "orators" relates plural instead of the singular number.

Schedule of bonds held by Eugene Kelly and John T. Terry, issued by the State of Tennessee to the Mobile & Ohio Railroad Company.

Terry.	Color.	Number.	Letter.
	White.	1874	B.
Kelly,	,,	4953	,,
	,,	4954	,,
	,,	5047	,,
	,,	5628	,,
	,,	5786	,,
	,,	5787	,,
	,,	5906	,,
	,,	4955	,,
	,,	4956	,,

UNITED STATES OF AMERICA.

In the Circuit Court of the United States, within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof. 1

Proceedings had in said Court, at a Regular Term thereof, begun and held for its November Term, A. D. 1879, at the United States Court House, in the City of Memphis, in said District, on, to wit: the 24th day of April, A. D. 1880, in the following cause, to wit: 2

CALVIN AMORY STEVENS,
Plaintiff,

vs.

No. 319, Equity.

THE MOBILE and OHIO RAILROAD COMPANY, et al.,
Defendants. 3

Upon petition and motion of Ernst Saladin, Augusta Iselin and Alexander R. Duncan to be made parties defendant to this cause. And it appearing to the satisfaction of the Court from an inspection of their sworn answer that they are proper parties to this cause, and should be made defendants there- 4

5 to, and the said complainants not objecting to their being made such parties, but expressly assenting and agreeing thereto. It is therefore ordered adjudged and decreed that the said Ernst Saladin, Augusta Iselin and Alexander R. Duncan be made parties defendant hereto, and that they be allowed to file their answer to the Bill of Complaint heretofore filed herein. It is further agreed between the parties hereto and is so ordered by the Court, that the testimony already taken in this cause on either
6 side may be used against or on behalf of said Saladin, Iselin and Duncan as though they had been originally defendants, and had been parties to the taking of said proof. It is also by consent ordered that the said answer herein stand as if complainant had filed their formal replication thereto and issue joined thereon, with the effect of such replication regularly filed thereto.

7

8

IN THE

Circuit Court of the United States,

For the Sixth Judicial District,

AND WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS
vs. } 319.
THE MOBILE & OHIO R. R. Co.

The separate answer of William Butler Duncan to the bill of Complaint filed in this Honorable Court by Calvin Amory Stevens, for himself and others claiming the like right against the Mobile and Ohio Railroad Company, to which bill this respondent has been made a party defendant:

This respondent, reserving to himself all right and benefit of exception to said bill of complaint for the manifold errors and insufficiencies therein contained, for answer thereto, or to so much and such parts thereof as he is advised it is material for him to answer, answering, says:

It is true that said Mobile and Ohio Railroad Company is a corporation chartered by the State of Tennessee. Said Company has built, and prior to May, 1875, was operating, a line of railroad from Mobile in the State of Alabama, in and through a

portion of the States of Alabama, Mississippi, Tennessee and Kentucky, to Columbus in the State last named.

Said company so built and operated its said line of railroad under Acts of the General Assemblies of said States, which defined the rights, powers and privileges of said corporation. This respondent does not admit that the Act of Incorporation of said company attached to the bill of complaint is correct, but for greater certainty will produce at the hearing certified copies of said Act, and will also produce certified copies of the said Acts and Statutes of the said and other States respectively, and craves leave to refer thereto as often as may be required.

Further answering, this respondent shows that by deed bearing date 1st November, 1853, the said Mobile and Ohio Railroad Company conveyed in trust to trustees therein named all its said line of railroad, with all appurtenances thereto belonging, including all its property then owned or thereafter to be acquired in the State of Tennessee, to secure the payment of six thousand bonds, to be issued by said corporation, of two hundred and twenty-five pounds sterling each, of the currency of the Kingdom of Great Britain and Ireland, and the coupons for interest thereto attached of six pounds fifteen shillings each, in the same currency, as described in said deed of trust. Said deed upon its face reserved, as prior to the right and lien thereby and therein created for the payment of said bonds and interest coupons therein described, the rights and liens that would attach to its property in said State of Tennessee, in favor of said State of Tennessee, for aid and advances proposed to be made by said State to said company in the construction of so much of the roadway as lies in said State. Said lien so recognized as prior to the lien of said deed of trust, was declared by said deed to be in favor of said

State, and to the extent of ten thousand dollars per 9
mile. Said State of Tennessee did so aid the said corporation by the advance of its bonds as money to the extent of one million two hundred and ninety-six thousand dollars or thereabouts, and thereby the lien so recognized by said corporation in favor of said State of Tennessee, and which was declared by the Statutes of the State as the condition of the said aid and security for its payment to said State by said corporation, according to the terms of the Statutes, became perfect and binding upon said 10
property, in favor of said State and against said corporation and the beneficiaries of said deed of 1853. Subject to the lien so declared, the property of said corporation in the State of Tennessee passed to said trustees under said deed of 1853. Respondent will produce to the Court, as he may be directed, a certified copy of the said deed of trust of 1st November, 1853.

This respondent further shows, that in the year 1875 he and one Andrew Foster Elliot, who has 11
since died, became the trustees of said trust property under said deed. The said corporation made default in the year 1874 in payment of the then maturing coupons for interest upon the said bonds secured by said deed of 1853, and so continued in 1875, and thereupon, in pursuance of the terms of said deed, this respondent and said Elliot, as trustees aforesaid, entered upon and took possession of all the property conveyed by the said deed of 1853, and filed their bill of complaint against the Mobile 12
and Ohio Railroad Company and others, subsequent incumbrancres of said mortgaged property, in the Circuit Court of the United States at Mobile for the Fifth Judicial Circuit, and the Southern District of Alabama, for the foreclosure and sale of said mortgaged property and the payment of the said bonds secured by said deed of mortgage and trust.

13 The principal office and place of business of said corporation, and its home, was in said city of Mobile, and within said Southern District of Alabama. Said Court took jurisdiction of said cause, and by order and decree thereof, this respondent, with said Elliot, were recognized as trustees in possession, and were directed to operate and manage said railroad and property as Receivers of the Court, and were charged with the duty and accountability to the Court of its Receivers.

14 This respondent and said Elliot, trustees aforesaid, also immediately thereafter filed bills of complaint against said railroad company and parties claiming under it, in the Circuit Court of the United States in the States of Mississippi and Kentucky, for the foreclosure and sale of said mortgaged property. Said last-named bills and proceedings thereunder were and are ancillary, and in aid of the suit in the Circuit Court of the United States for the Southern District of Alabama, and have been so

15 dealt with by said Courts. Said last-named Courts also, by orders and decrees, recognized and appointed this respondent and said Elliot as Receivers of said trust property, but more particularly amenable to the jurisdiction of the Circuit Court at Mobile.

The Receivership, so ordered by said Courts respectively, has never been revoked or in any way discharged, and this respondent, the survivor of said Elliot, still continues and now is in possession

16 of said mortgage and trust property as Receiver aforesaid.

Respondent will produce and prove certified transcripts of said orders, decrees and appointment, as may be directed by the Court.

This respondent, further answering, shows that, as trustee aforesaid, he recognized, as he was legally bound to do, the priority over the lien and mortgage

of the deed of 1853, of the right and lien of said 17
deed, acknowledged upon its face, in favor of and belonging to the State of Tennessee, upon the railroad and property of the said Mobile and Ohio Railroad Company within said State, for the amount of the aid and advances which said State had, after the execution of said deed of 1853, but before 1874, made to said corporation, as contemplated by said deed under the Acts of said State.

Before this respondent took possession of said trust property, and before default in 1874 of the 18
said railroad company in payment of its interest coupons as aforesaid, Richard T. Wilson, Adrian Iselin, and this respondent, who are all citizens of the State of New York, had been invested as trustees with the rights and liens which said State of Tennessee had by its legislation originally reserved to itself upon the railroad and property of said Mobile and Ohio Railroad Company within the limits of said State, to secure the aid and advances it had made to said corporation. This acquisition of said 19
right and lien was made with the knowledge and approval and consent of said railroad company, as expressed by its formal deed, dated the 1st of July, 1871, and was taken and obtained for the benefit and security of, and in trust for, the holders of certain bonds issued by said railroad company, dated ths 1st July, 1871, to the amount of one million six hundred and eighty-five thousand dollars, each being for the sum of one thousand dollars, payable in gold coin, for two hundred and five pounds sterling, 20
payable in London or New York, at the option of the holder, with interest at seven per centum per annum, as represented by interest coupons attached to said bonds. Said bonds are described in the said deed of said corporation, bearing date, as aforesaid, 1st July, 1871, a copy of which will be produced at the hearing of this cause.

21 This respondent further shows that said last-named bonds were issued by said corporation under authority of legislation of said State of Tennessee, as expressed by statutes of the State, one approved 25th February, 1869, entitled "An Act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," the other, approved 2d January, 1870, entitled "An Act for the payment of the State debt."

And these Acts were themselves enacted under
22 express authority reserved to said State in the 12th section of the Act of 11th February, 1852, entitled "An Act to establish a system of internal improvements in this State," which, with its amendments, furnished the authority upon which the State of Tennessee had made its loan to said corporation by delivery of its bonds. The whole transaction between said State and said corporation in relation to the loan by the former, and the issue of its bonds to said corporation, and the liabilities, duties, and
23 responsibilities of the latter in connection with said loan, and the receipt and use of said bonds, and their mutual and respective rights and duties, originated and is controlled by said legislation last named.

This respondent does not admit that the documents attached to said bill of complaint, and presented as copies of the several Acts therein mentioned, are correct copies thereof; for greater certainty, this respondent will produce at the hearing
24 examined or certified copies of said acts, as they were passed by the General Assembly of the State of Tennessee, and craves leave to refer thereto as often as may be necessary.

Further answering, this respondent shows that said bonds, dated 1st July, 1871, and described in said deed of that date as hereinbefore stated, were negotiated and sold to the holders thereof for value

paid by them ; and with the proceeds of said sale 25
said Wilson, Iselin and Duncan, as agents of said railroad corporation and trustees of said bondholders, purchased bonds of the State of Tennessee, as authorized by said Acts of 1869 and 1870, and surrendered the bonds so purchased to said State ; they also presented said new bonds of said railroad company to the Comptroller of said State, and the same were by said officer certified and registered, as required by said Acts ; said Comptroller also certified that they were secured by first mortgage on the 26
property of said corporation. This respondent states that the conditions of said Acts and their provisions in relation to the delivery of bonds of the State—of the kind and description to be delivered—the presentation and certification of said new bonds of the said railroad company by the Comptroller of said State, and the assignment and transfer to said Wilson, Iselin and Duncan, trustees, as aforesaid, of the lien theretofore held by the State of Tennessee, as reserved to it under said Act of 11th February, 27
1852, and the Acts amendatory thereof, were fully complied with ; and said trustees, by legal assignment and transfer from said State of Tennessee, became and were the lawful and proper owners and holders of said lien and securities for the benefit and protection of their *cestuis que trust*, the holders of said bonds, as aforesaid. For the details of this settlement and adjustment with the State of Tennessee—the delivery of bonds and the assignment and transfer of its rights and liens to said trustees— 28
this respondent refers to the answer filed in this cause by his co-defendant the said Mobile & Ohio Railroad Company.

This respondent further shows, by way of answer, that on 27th May, 1875, said trustees Wilson, Iselin and Dnncan filed their bill of complaint in this HonorableCourt against the said Mobile & Ohio Rail-

road Company, and all subsequent incumbrancers claiming under said corporation, and therein asserted their right to the lien acquired, as hereinbefore stated, from said State of Tennessee on the property of said corporation in said State, as the lawful assignees and transferees of said lien, and prayed decrees of foreclosure and sale of said property. Such proceedings were thereon had that this respondent and said Elliot, now deceased, were appointed the Receivers of the Court of all said property.

Such further proceedings were also had in said cause that the rights and equities of said complainants as asserted in the bill were recognized and established by the decree of the Court, and decrees of foreclosure and sale were rendered, as prayed by said trustees. Said decree of sale has not yet been executed, and this respondent still continues in possession of said property as Receiver, aforesaid; but now, under said decree, wholly for the benefit of said complainants.

This respondent also shows that in the cause pending in said Circuit Court at Mobile, in the State of Alabama, such proceedings have been had that a decree of foreclosure and sale has been rendered in favor of said complainants in that cause; said decree has not been executed, but in both cases the sale has been suspended upon request of the *cestuis que trust*, and this respondent still is in possesion of the trust property as Receiver, but now for the benefit of said complainants and the beneficiaries whom they represent. This respondent will produce and prove at the hearing transcripts of the judicial proceedings, orders, and decrees herein mentioned as the Court may direct, and respectfully insists that unless and until the complainant shall procure permission to bring this suit from each of said courts, which have taken jurisdiction of the

property of said corporation, and by whom this 33
respondent has been appointed Receiver as aforesaid, said complainant is guilty of comtempt upon them respectively in making this respondent a party defendant in this suit, and the same will not and should not be tolerated by this Honorable Court, and respondent prays to be herein dismissed.

This respondent further respectfully insists that the said Richard T. Wilson and Adrian Iselin, and said William Butler Duncan, in his character of trustee under said deed of 1st July, 1871, who claim 34
to hold the lien upon said property which was originally reserved to the State of Tennessee, under said Act of 11th February, 1852, and the Acts amendatory thereof, are necessary parties to the bill filed by said complainant in this cause, and unless said persons be made parties to said bill the same should be herein dismissed.

Further in defense of said bill, this respondent shows that the claim asserted by the plaintiffs in this cause originated in a loan by the State of Ten- 35
nessee to the Mobile and Ohio Railroad Company, made at sundry times from 1856 to 1861; said loan was made to said corporation in bonds issued by said State at par, and the same were received by said corporation as moneys, and that said bonds were issued to said railroad company, under the terms and conditions of an Act of the said State approved 11th February, 1852, and Acts amendatory thereof, entitled "An Act to establish a system of internal improvements in this State;" one of the 36
conditions of said loan is expressed in the 12th section of the Act, whereby said State expressly reserved the right to enact by its Legislature thereafter all such laws as she might deem necessary to protect the interests of the State, and secure it against any loss in consequence of the issuance of bonds under the provisions of the Act, but not to

37 impair the vested rights of stockholders of the aided companies. This respondent shows that at sundry times said State by its Legislature did pass Acts, whereby it modified some of the provisions of the Act of 1852; it enlarged its loans from $8,000 per mile to $10,000 per mile; it enlarged its loans to provide for the building of bridges; it modified more than once the annual payment which it required of the aided companies to be made into the treasury of the State on account of its said loans to
38 said companies by the issuance of its bonds.

This respondent shows, that during all the time from the issue of said bonds, to the time when said State assigned its lien and mortgage to said Wilson, Iselin and Duncan, it claimed to be the sole owner of the said lien and mortgage, and of the debt which had been created by the loan to said companies by said State, and which was intended to be secured by said loan and mortgage, and constantly, publicly and openly, by its legislative and administrative
39 acts, asserted such ownership, and dealt with the whole subject in this character, and in this spirit, and for its own benefit and advantage, as sole owner and proprietor.

Upon this claim, and in this character, as well as upon the right reserved by it in the 12th section of the Act of 1852, as absolute owner of said debt, and the lien and mortgage for its payment, said State passed the Acts of 1869 and 1870, in this answer before, and also in the bill of complaint
40 mentioned.

Upon this claim, and in this character of owner, said State of Tennessee made the settlement and transaction hereinbefore stated with the said Wilson, Iselin and Duncan, trustees as aforesaid; and made other settlements and transactions of claims it asserted against other railroad corporations besides the Mobile and Ohio Railroad Company; and by

said settlements retired its bonds and other evi- 41
dence of debt, to the amount of many millions of dollars, which retired bonds it still holds and retains. In its settlement with said Wilson, Iselin and Duncan, said State of Tennessee received in consideration of the transfer and assignment to them of said lien and mortgage, its bonds and coupons to the amount of one million six hundred and seventy thousand four hundred and eighty-one $\frac{82}{100}$ dollars, and which it still retains with no offer to return.

This respondent shows, and respectfully insists, 42
that the State of Tennessee is a necessary party to the bill of complaint in this cause, and unless said State be made a party thereto, there is no jurisdiction in this honorable Court to entertain said bill, and this respondent respectfully insists said bill should be dismissed.

Respondent prays he may have the benefit of this defence of want of proper parties, both in relation to said State of Tennessee, and the said Wilson and Iselin, the same as if said defence had been 43
presented to the Court by demurrer to this bill, or the same had been presented as matter of defence by way of plea to said bill of complaint.

And for further defence to said bill of complaint, this respondent shows that said Mobile and Ohio Railroad Company is in no way a party to the bonds of which said complainant claims to be the holder, nor to any of the bonds which were loaned to it by said State of Tennessee; it never signed or endorsed any of them; it never guaranteed in 44
any manner or form the payment of any of them, or of any interest accruing thereon; said corporation never directly or indirectly made any contract in relation thereto, or any of them, with said complainant, or any holder thereof; it never made any contract upon or in relation to said bonds, or their payment, which passed or was designed to pass by

45 delivery or assignment of said bonds. The right of the holder is expressed upon the face of the bonds, which is for payment from the said State of principal and interest, as declared by the terms of the bond. He denies that any lien upon the property of said corporation ever inured to said complainant or any holder of said bonds. He denies that the lien and mortgage provided by the said internal improvements Acts of said State were attached to said bonds or passed to the holders thereof, either
46 directly or indirectly, through the agency of any trust held by said State, or in any other manner. He denies that said State of Tennessee reserved or ever held the lien or mortgage declared by said Acts, or any trust whatever, or for any person other than for said State, and to secure to said State payment of the debt which arose to her from said corporation upon the loan which said State made to said corporation. He denies that the construction of said Acts by said complainant as pre-
47 sented in this bill for this cause is the true and proper construction thereof. He denies that the tenor and meaning of said Acts is as stated in said bill of complaint. He denies that it was ever intended that said corporation should pay, or that it ever assumed to pay, said bonds and interest according to the terms of said bonds and coupons. On the contrary, he avers that payment of said bonds and interest is the obligation and duty of the State alone, and that said bonds were negotiated and
48 purchased as obligations of the State alone, and alone upon her credit, without reference to any liability or obligation thereon on the part of the corporation to which the State loaned them, or to any lien upon any of the property of such loanee. This respondent shows that the obligation of such loaners was not for the payment of principal and interest expressed in said

bonds and coupons to the holders thereof, 49
but was an obligation to the State of Tennessee to
pay to it the debt it incurred to the State by receiv-
ing and using its bonds, and in the mode and
manner declared by the act which authorized the
loan, and not at all in the mode and manner and at
the place provided by said bonds and coupons; the
two obligations were and are entirely separate and
distinct. The one is upon and by the bonds and
coupons, and that is the property of the holders of
the bonds, and is to be discharged by the State of 50
Tennessee to such holder; the other is to be dis-
charged by the railroad corporation to which the
bonds were loaned as the consideration of the obli-
gation, and is to be discharged to the State which
furnished the consideration, and to no other person,
unless expressly assigned by said State. Said inter-
nal improvement Acts provide the mode and man-
ner of discharging this obligation to the State by
said loanee. As to interest, the said loanee was to
pay to the fiscal agent of the State, and at its 51
capital, fifteen days in advance of the liability of the
State, an amount of money which would enable the
State, without expense to itself, to make payment
at the place of payment designated in the obliga-
tion, whether in or out of the State, at the time
appointed for its payment. For non-compliance
with this term of its obligations a specific
remedy and penalty befitting the character of
the sovereign was provided, but not at all
suitable to be employed by one subject or citizen 52
against another. As to the principal due the State,
which was the aggregate of the bonds received from
the State, the loanee was to make payment in in-
stalments, beginning at the end of five years from
the completion of the loanee's road, by the purchase
of bonds of the said State, and the delivery thereof,
after assignment to the Governor, into the treasury

53 of the State, and when so delivered said bonds were to be a credit to the loanee on its debt to the State; and the interest hereafter accruing upon said bonds of the State so paid in, the State aforesaid to hold and use, as a sinking fund for the payment of the bonds it might have loaned to the corporation so paying in; for non-compliance by said loanee with this term of its contract, a specific remedy and penalty was provided, befitting the character of a sovereign to employ, but not suitable to be exercised by
54 a private citizen. If said State chose to indulge the borrower by not enforcing its rights till the maturity of the bonds so loaned to it, it was made the duty of the loanee to provide for their payment, and if not then paid by it, the payment of the debt due the State was to be forced by proceedings in chancery and the appointment of a Receiver, to be conducted by the Attorney-General of the State, in its name and for its protection and benefit; with authority in the Governor to appoint an agent to purchase the
55 property for the State, and in its name.

This respondent shows that no right of any kind is declared or reserved in said Acts for the benefit of the holder of any of said State bonds so issued. The debt of the aided corporation belonged wholly to the State, with power to do with it as it saw fit. The right of the bondholder was his claim upon the State alone for payment of the money it had assumed by its bonds to pay. In accordance with its said right, the said State has transferred and assigned its
56 claim against this corporation to the said Wilson, Iselin and Duncan, and they alone have right to enforce the lien originally reserved to the said State upon the said property of the Mobile and Ohio Railroad Company, and this they have already done and obtained the decree of this Honorable Court thereon.

Further answering, this respondent denies that

the Acts of 1869 and 1875 are unconstitutional or in 57
any way violate any provision of the Constitution, State or Federal. He denies that the transaction and settlement made with the said State of Tennessee by the said Mobile and Ohio Railroad Company under said Acts, and that the transfer by said State of its lien or mortgage and rights to said Wilson, Iselin, and Duncan, or either of said transactions, is any violation or infringement of the rights of said complainant, or of any holder of bonds similar to those claimed to be held by him, He denies that 58
thereby the obligation of any right or contract held by said complainant, or by any like bondholder, has been at all infringed or impaired. He insists that said complainant's rights have in nowise been disturbed by said acts or by said settlement; he still has all the right and claim he ever had, which is the obligation of the State of Tennessee, as expressed upon the bonds and coupons he holds; but he never had at law or in equity any claim against the said Mobile and Ohio Railroad Company, or lien of any 59
kind upon its property in Tennessee.

This respondent presumes the Acts of 1869 and 1870 may have been amended upon their passage through the General Assembly of Tennessee, but of this and the purposes of such amendment he has no knowledge. He knows of no improper influences or purposes about the enactment of that Legislature, and does not believe such existed, and denies that he participated in any such. There were ample in-
ducements to the State to adopt the policy of said 60
Acts in her financial condition, and in an honorable attempt to reduce her public debt by a judicious and wise use of her assets, and in offsetting debts due to and from her.

This respondent does not know of the claim of the complainant to the bonds of Tennessee, alleged in his bill to be held by him, and requires full proof

of the ownership he asserts, when he acquired said bonds and upon what consideration. Said complainant has been guilty of laches in not asserting his claim earlier and before the settlement between said railroad company and the State of Tennessee; his neglect to do so is accounted for by the fact, which respondent is informed and believes, and upon such information states to be the case, that when said bonds were negotiated, and long afterwards, no person who purchased and dealt in them claimed or believed that they acquired thereby any right or claim of any kind, other than what is expressed upon the face of the bond, that is, the obligation of the State alone to pay the money therein named and so redeem her plighted faith. The claim of lien and trust now set up is an afterthought and of recent growth, since said State has failed to pay the interest upon her bonds; and this is confirmed by the fact apparent upon complainant's bill that he has accepted the prior obligations of the State for the larger portion of the matured interest upon said bonds, under the pending Acts of the State; and this respondent denies that said complainant and those in like condition have any lien or claim of any kind upon the property or any portion thereof in the State of Tennessee for the payment of said bonds claimed to be held by them; but insist that the liens and mortgage originally existent thereon, and reserved by and for, and conceded by said railroad company to said State, has by valid and legal transfer and assignment become and now rightfully is the property of Richard T. Wilson, Adrian Iselin and William Butler Duncan in trust for the persons, uses and purposes as aforesaid.

This defendant denies all and all manner of fraud and collusion and unlawful confederacy with which he is by said bill charged, without this, that there is any other matter, cause or thing in said bill of

complaint contained, material or necessary for this 65
defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court may direct, And now having fully answered, this defendant prays to be herein dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained. 66

P. & T. A. HAMILTON,
Solrs. Resp't.

UNITED STATES OF AMERICA. }
Southern District of New York. }

This day of 1879, before the undersigned, Commissioner, appointed by the Circuit Court of the United States for the Southern District of New York to take testimony, 67
comes William Butler Duncan, the respondent in the foregoing answer, who is personally known to me, who being duly sworn, on his oath saith he has read the foregoing answer, and that the statements therein contained, so far as made upon personal knowledge, are true, and so far as made upon information and belief, he believes them to be true.

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11024

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds issued to the MOBILE & OHIO RAILROAD COMPANY, 2

vs.

THE MOBILE & OHIO RAILROAD COMPANY, et al. 3

Replication of complainants to the answer of defendants.

Repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto, says he will 4 aver, maintain and prove his said bill of complaint to be true, certain and sufficient in law to be answered unto, and that said answer of the defendants is uncertain, untrue and insufficient to be replied

5 thereunto by repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable Court shall direct and humbly prays, as in his original bill he has already prayed.

6

E. L. ANDREWS,
GEO. HOADLY,
L. & E. LEHMAN,
Compt's Sol's.

7

8

UNITED STATES OF AMERICA.

1

In the Circuit Court of the United States, within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court, at a Regular Term thereof, begun and held for its November Term, A. D. 1879, at the United States Court House, in the city of Memphis, in said District, on to. wit: 2
the 12th day of May, 1880, in the following cause, to wit:

CALVIN AMORY STEVENS,
Plaintiff,

v.

THE MOBILE AND OHIO RAILROAD COMPANY and others,
Defendants. 3

This cause coming on further to be heard on the request and upon the motion of all the parties to this cause, it is ordered by the Court that the answers heretofore filed herein of the said Mobile and Ohio Railroad Company, of Wm. Butler Duncan, 4
Receiver, and of Ernest Saladin, Augusta Iselin

and Alexander R. Duncan, to the original bill of complaint of Calvin Amory Stevens, filed herein, shall be taken and considered as answers to said bill as amended by the addition of Jno. T. Terry and Eugene Kelly as complainants, and no other or additional answer or answers may be filed by said defendants, or either of them, and they and each of them are to have the same force and effect as though at the time of filing the same the said Terry and Kelly had been parties to said bill of complaint, and as though said answers had been responsive to said parties and the amendments made by them.

2d. That all depositions heretofore filed in this cause prior or subsequent to the time of said Terry and Kelly being made parties shall be taken and regarded as evidence for or against the said Terry and Kelly, or either of them, and for or against the said Saladin, Iselin and Duncan, the same to have the same force and effect as though the said Terry and Kelly had been complainants, and the said Saladin, Iselin and Duncan defendants in this cause from the beginning thereof, and as though they and each of them had heretofore had the fullest opportunity to examine or cross-examine said witnesses.

3d. That all stipulations and agreements of counsel heretofore made herein between said Calvin Amory Stevens and the Mobile and Ohio Railroad Company and Wm. Butler Duncan, Receiver, shall be held and regarded as applying to and binding upon the said Terry and Kelly and upon the said Saladin, Iselin and Alexander R. Duncan, to the same extent as though they and each of them had been parties to said stipulations and agreements, and they hereby adopt and ratify the same as fully as they can do so.

4th. That the hearing of this cause is in no manner to be delayed by the addition of the said Terry and Kelly as complainants, and of the said Saladin, Iselin and Duncan as defendants, but the same is to be proceeded with in all respects as though the said Terry and Kelly, Saladin, Iselin and Duncan were original parties to this cause.

Deposition of Major Campbell Wallace.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the holders of bonds issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY et al.

No.
In Equity.

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & GEORGIA RAILROAD COMPANY,

vs.

THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY et al.

No. 662.
In Equity.

5 CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & VIRGINIA RAILROAD COMPANY,

vs.

6 THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY et al.

No. 663. In Equity.

CIRCUIT COURT OF THE UNITED STATES

EASTERN DISTRICT OF TENNESSEE.

7

CALVIN A. STEVENS, on behalf of holders of bonds issued to the CINCINNATI, CUMBERLAND GAP AND CHARLESTON R. R. Co.

vs.

THE CINCINNATI, CUMBERLAND GAP & CHARLESTON R. R'D Co. et al.

8

No. 664. In Equity.

CIRCUIT COURT OF THE UNITED STATES, 9

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of the holders of bonds issued to the KNOXVILLE & KENTUCKY RAILROAD COMPANY,

vs.

THE KNOXVILLE & KENTUCKY RAILROAD COMPANY.

No. 665.

10

CIRCUIT COURT OF U. S.

MIDDLE DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of bonds issued to the NASHVILLE & CHATTANOOGA R. R'D COMPANY,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *et al.*

In Equity.

11

CALVIN A. STEVENS, on behalf of holders of bonds issued to the NASHVILLE & NORTHWESTERN R. R. R. Co.,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY *et al.*

In Equity.

12

13

CALVIN A. STEVENS, on behalf of holders of bonds issued to McMINNVILLE & MANCHESTER R. R'D CO.,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY *et al.*

In Equity.

14

CALVIN A. STEVENS, on behalf of holders of bonds issued to the WINCHESTER & ALABAMA RAILROAD COMPANY,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY *et al.*

15

In Equity.

The deposition of MAJOR CAMPBELL WALLACE, President of the Merchants' Bank of Atlanta, taken on behalf of the defendants, at the Merchants' Bank in Atlanta, I. C. D. Woodson, a notary public, for the County of Fulton, State of Georgia, and in the presence of W. Y. C. Humes, solicitor of the defendant, on the 2d day of October, 1879.

16 The said witness Campbell Wallace, being first duly sworn, deposes and says: My name is Campbell Wallace; my age is seventy-three years; I am a resident citizen of the State of Georgia, and have been for fourteen years last past. I am now and have been for more than six years the President of the Merchants' Bank of Atlanta, actively employed in the duties of that office. I have no connection

official or other, with any of the railroad companies 17
of Tennessee, nor am I at all interested in any of
their stock or securities, bonds or assets, nor any
bonds issued by any of them or by the State of
Tennessee for any purpose, except ten shares of
stock of the Knoxville and Ohio Railroad Company.
Nor am I interested in any, the smallest degree, in
the issue of any of these suits. I was a citizen and
resident of East Tennessee all my life until my re-
moval to Georgia in 1865. I was a director in the
East Tennessee and Georgia Railroad Company 18
prior to and up to 1853, when I was elected its
President, and from 1853 to July, 1865, gave my
time and attention almost entirely to the duties of
that office, and the interest of that road. I was its
chief executive officer and financial agent. Under
my direction and immediate control all its fiscal
operations, transactions and contracts were made,
consummated and performed, from 1853 to 1865. I
personally know that the State of Tennessee did
lend its endorsement and guarantee on and to the 19
bonds of several railroad companies, including bonds
of the Nashville and Chattanooga Railroad Com-
pany, of the East Tennessee and Virginia Railroad
Company and of the East Tennessee and Georgia
Railroad. And these company bonds were secured
by first liens and mortgages on the railroad com-
panies issuing them in addition to the endorsement
and guarantee of the State. However, the 150
bonds of the Nashville and Chattanooga Railroad
Company, issued by that company with the en- 20
dorsement and guarantee of the State to aid in the
construction of the Chattanooga Branch of the East
Tennessee and Georgia Railroad Company were
secured by a first mortgage on the said Chattanooga
Branch. These bonds of various companies, though
secured by the endorsement and guarantee of the
State, as well as by first liens and mortgages on the

property of the roads issuing them, did not sell for as high prices as straight Tennessee State bonds bearing the same rate of interest and for whatever purpose issued, whether for railroads or purely State purposes.

Before I was elected President, the East Tennessee and Georgia Railroad Company had received from the State of Tennessee State bonds payable to bearer, with coupons attached, payable semi-annually, to the amount of $350,000 as a loan. After I became its President, and up to July, 1861, the East Tennessee and Georgia Railroad Company received in addition to the above, as a State loan, bonds to the amount of $812,000, of the same character and description as the above under the general Internal Improvement Act of February 11th, 1852, Ch. 151, and the Acts amendatory thereof; so that our whole debt to the State for six per cent. State bonds lent to us amounted on the 30th of June, 1860, to, and appears in the report of that date as follows:

State loan, . . . $1,162,000

The account as to Company bonds of the East Tennessee and Georgia Railroad Co., endorsed by the State, is set down:

Endorsed bonds, . . . $150,000

In our entire dealings with the State bonds issued to our road, we regarded and treated them as the obligations of the State of Tennessee alone, and we treated, construed and regarded our obligation (arising from the loan of said State bonds to us by the State), as a debt due from the railroad company to the State alone for the amount of the bonds so lent to the company, at their nominal or face value, and they were the equivalent of money for State of Tennessee six per cent. bonds were then worth and selling at par, as the State had never defaulted in the payment of the interest on her bonds at matur-

ity. The $812,000 of State six per cent. coupon 25
bonds payable to bearer issued to said Company during my Presidency were disposed of under my direction by the Treasurer, R. C. Jackson, and by me. They were sold as required by the law, and their proceeds applied strictly in accordance with its provisions. I sold them principally in Tennessee. I never thought of, nor represented, nor directed any one to represent to any buyer that the payment of the bonds to the holder was secured by any obligation of the company or by any lien on the 26
property of the company in favor of the bondholders: I did not think so myself, and never heard it suggested or claimed by any one during the period we were receiving and selling them, nor did I ever hear of such a claim by any one until within the last two years. When we received the several instalments of these State bonds from the State as loans, no State officer then or at any other time instructed, directed or requested us to adopt any system or mode of identification, marking, 27
or noting the particular bonds issued to us, nor even to preserve the numbers, and we did not ourselves adopt any such system or mode, but we simply credited to "State loan" the amount issued at the time, and on sale of them charged to cash. In paying our semi-annual interest to the State on the amount of her loan to us we did not attempt to have the payments so made applied to the particular coupons attached to the bonds issued to us; nor did we attempt to hunt up said coupons to 28
pay them ourselves; nor did we ever entertain the idea that any holder of State bonds was a creditor of the company. On the 15th of December, and on the 15th of June of each year, we paid the semi-annual installment of interest due to the State from our company on the amount of bonds previously loaned to our company by the State. We paid this

interest to the Bank of Tennessee, as the general fiscal agent of the State, and we paid it indiscriminately in money, or any six per cent. coupons from any State bonds, whether issued to railroads or for any purely State purpose. Having paid our interest to the State, and received the receipt for it from the bank, we felt no further concern whether the State paid her coupons when they matured fifteen days afterwards on the bonds issued to us or not; and we never sought or attempted to get the coupons attached to the bonds issued to our company, nor could we have identified them. But as to the bonds of our company endorsed by the State, we did seek and did pay the coupons on them as our own liability; they amounted to $150,000.00 as at first issued, and were issued under a special act for the benefit of our branch road from Cleveland to Chattanooga. In keeping the account and paying the interest due from our company for the amount of bonds lent by the State to our company, we regarded and treated it as interest due to the State from our company on the amount of loan, and not as interest due from the company to the holders of the bonds issued to our company.

If I had regarded or thought our company was liable to the holders of the coupons and bonds of the State lent to us, we would certainly, for our own protection, have pursued the same course as to them, both in regard to the interest coupons and the bonds, that we did pursue in regard to our bonds endorsed by the State.

As to these latter bonds, we carefully and regularly, every six months, paid the interest coupons attached to them as our primary obligations; and we saw to it that the State authorities, the Sinking Fund Commissioners, applied each annual payment to the extinguishment of our own bonds endorsed by the State. We bought any six per cent. cou-

pons of State bonds which were offered to us, and 33
took them sometimes to accommodate our friends
giving them the money for them; and coupons so
bought, and taken, we used to pay our interest to
the State, no matter from what State bonds they
were taken, so they were from Tennessee six per
cent. bonds, and so we satisfied the State authorities
that we got them before or on the 15th day of
December or 15th day of June, the dates of our
payments. We paid our interest promptly and
regularly to the State every six months before the 34
war, and up to January 1st, 1863; but we after-
wards fell behind in paying our interest to the State
as follows, as I reported to the stockholders:

"The interest on State loan was paid up to 1st
of January, 1863, and the balance of $155,550.00
was not paid to the State, when it fell due in 1863,
1864, and to 1st of July, 1865.

Although the State defaulted in the payment of
all her interest coupons on all her bonds during
the war, and although this unpaid interest of our 35
company to the State, $155,550.00, remained unpaid
for several years, yet no holders of the coupons, or
of any interest coupon attached to the bonds
issued to our said company ever presented such
coupons or coupon to our company for payment, or
ever demanded or claimed payment of such coupons
or coupon from our company within my knowledge
or information. In making the successive annual
payments to the State of the sums produced by set-
ting apart the percentum on the amount of bonds 36
issued to our company, as required by the 7th sec-
tion of the Act of February 11th, 1852, ch. 151, and
also under the amendments thereto, we construed
and treated them, and had them receipted for by
the State officials as credits on our company's debt
to the State for the State loan, and as payments in
absolute discharge of that much of that indebted-

ness. The mode of the first act was to raise the sinking fund by preserving the State bonds after they had been assigned to the Governor and paid into the Treasury of the State by the company, and reinvesting the interest accruing on them in other State bonds in order to accumulate before the State bonds fell due a fund for the State sufficient to enable her to pay her bonds. This clause of the first act contemplated that, although these annual installments were absolute payments by the company on their debt to the State, and receipted for as such when made, yet the company should continue to pay to the State the interest on the amount of bonds originally loaned to it, and these annual payments, though absolute when made, were to be credited as of the date when they and their accumulations should equal the debt due from the company to the State for the amount of the State bonds lent to the company.

Seeing the management of this scheme, I detected that it was liable to confusion in the keeping of the accounts at Nashville of the payments of bonds and reinvestment of interests on bonds paid in by so many companies—some twenty to twenty-five; and more especially as these matters were managed by political appointees, changed every two years with the Governor's election, and not by business men selected and retained for their financial skill. By this confusion we were in peril of losing some of our credits for bonds paid in and thus have to pay again the credit so lost. For these reasons I, as President of the East Tennessee & Georgia Railroad Company, solicited and induced the Legislature, having John Marshall, as President of the Tennessee & Alabama Railroad Company, to help me, to increase the annual payments required to sums adequate to liquidate the debts of the several companies to the State, before the State bonds should

fall due, without the compeer mode above set forth, of keeping the bonds, setting aside the accruing interest, reinvesting it, and thus accumulating the fund for the State.

The Legislature did increase the annual payments of percentage to 2½ per centum on the amount of bonds loaned to the respective companies, and did require the bonds in which these annual bonds were to be made to be cancelled when paid in, instead of being kept, and did allow the payments to be credited as of the dates they were actually made instead of as of the date the accumulated fund should equal the Company's debt for the amount of State bonds loaned to it. The Legislature very willingly and readily adopted this measure because it increased the amount of State bonds annually to be paid by all the railroad companies to the State, and would thus accomplish the purpose of the original act of retiring by or before the maturity of the bonds as many of them as the State had issued to railroad companies.

The officers of some of the railroad companies were opposed to this increase of annual payments; but I, as President of the East Tennessee & Georgia Railroad Company, not only solicited and favored its adoption, but after its adoption I increased our payments beyond the requirements of the law. As evidence of this, I here, as part of my deposition, quote the following brief and truthful report on this subject made by me to the stockholders on the 3d of September, 1862, viz:

"The Internal Improvement law requires 2½ per cent. to be paid annually on your funded debt, which is ample to liquidate your entire indebtedness to the State before it matures.

"In consequence of the distracted condition of the country, the Legislature suspended the payment of this sinking fund, but we have thought it prudent

and to your interest to continue to pay not only the 2½ per cent., but as much more as possible, and your company are now some three years in advance of any legitimate call that can be made for payment of sinking fund. Your funded debt at present stands as follows :

Original State loans		$1,162,000
Paid and cancelled		125,000
		$1,037,000
Bonds endorsed by State	$150,000	
Paid and cancelled	35,000	
	$115,000	
Mortgage bonds		$800,000
Paid and cancelled		154,000
		$646,000
Total		$1,798,000 "

The $800,000.00 of mortgage bonds were bonds of the company, with which the State had nothing to do.

I herewith file as exhibits to my deposition, copies of the receipts of the State officers for the $125,000.00 paid to the State in its six per cent. bonds on the State loan to our company.

It will be observed that the $14,000.00 and $2,000.00 were paid in prior to 1860, and these receipts were acknowledgements of the cancellation of the bonds, under the Act of 1859-60, Ch. 90, previously paid in. The receipts, as to the endorsed bonds, show that we did not attempt to pay these endorsed bond debts in any but the identical endorsed bonds ; while the State loan we paid in any six per cent. bonds of the State without reference to what they were issued for, whether for railroads

or any purely State purpose. The Exhibits are 49
marked Nos. 1, 2, 3, 4, 5, 6.

The Government of the United States, by its military authorities, and for military purposes, occupied and operated the road for about three years during the war, to the exclusion of the company, its agents and officers, and without compensation to the company, so far as I know. During the war the interest falling due, and unpaid by the company on its debt to the State for the State loan, on its bonds endorsed by the State, and on the 50
other outstanding bonds of the company, accumulated to the amounts following:

On State loan	$155,550 00
On bonds endorsed by the State	21,030 00
On mortgage bonds	98,910 00
Total July 1st, 1865	$275,490 00

After we made payments annually and semi-an- 51
nually of money or bonds to the State, under the Sinking Fund provisions of the 7th Section of the Act of 1852, Ch. 151, these funds thus paid to the State were no longer subject to or controlled by the companies, but were managed and controlled by the officers and agents of the State, as belonging to the State, and without accountability to the railroad companies. The practical financial effect of our annual payments to the State, under the Sinking Fund provisions, up to the 4th day of June, 1862, 52
when the last payment was made under my presidency, was the discharge of $125,000 00 of our State loan debt to the State and the retiring of that amount of State bonds that had been issued for any and all purposes, as we had bought any State six per cent. bonds we found on the market without reference to the purpose for which they were issued;

and as they all bore the same price, whether issued to railroads or for any other purely State purpose.

The annual payments by the other railroad companies produced a like effect to the extent of those payments. If this scheme of the original act had been carried out, unobstructed by the war, or other adverse events, the final result would have been that the railroad companies, before the maturity of the bonds lent to them, respectively, would have paid the full amount of their respective debts to the State for the State loans to them, by retiring to the State that amount of the State's own six per cent. bonds.

As the 7th section allowed us to buy and pay into the State Treasury, and we did buy and pay in any Tennessee six per cent. bonds without regard as to whether issued as loans to railroads or for any purely State purpose, many State bonds issued for other purposes that as loans to railroads, no doubt were retired and would necessarily have been so retired, leaving a like amount of the bonds issued to railroads outstanding, and wholly unprovided for, except so far as the good faith and credit of the State secured them. That thus, many bonds issued to the railroads would have been left outstanding, was a result following necessarily from that provision or stipulation of the 7th section of the first act, allowing the railroad companies to make their annual payments by buying any bonds of the State of Tennessee, and paying them into the Treasury of the State after assigning them to the Governor. Bonds so paid in were a perfect security to the State for the debt of the railroads to her, but were necessarily unavailable to a holder of outstanding State bonds. As to the State, the operation of this provision if carried out was to secure to her the payment of the full amount of the State loans to the railroads; and during the process and periods of payment to maintain all her six per cent. bonds

issued for any purpose at one uniform price, and 57
this was the actual fact, uniformity of prices as to
all her six per cent. bonds. As to the railroads, the
operation of this stipulation or provision was to se-
cure to each of them the privilege of paying their
State loan debt in any State six per cent. bonds,
which they could do with greater facility and cer-
tainty than if required to hunt up the particular
bonds issued to them. As to the bonds themselves
the operation of this provision was to benefit them,
by giving them all the same chance to be retired by 58
any railroad purchase, and by increasing the State's
ability to pay as her debt was diminished. When
I made the last payment on the 4th of June, 1862,
of $100,000 in State bonds, the payments of the East
Tennessee and Georgia Railroad Company were
three years ahead of the requirements of the sinking
fund provision, although they, the sinking fund
requirements, were suspended by statute, and had
we not been prevented by the disasters of the war,
taking away our road and destroying our income, 59
I would have continued to make the payments as
fast and large as our means would have enabled us,
until we had paid the State loan debt in full to the
State in her own bonds or money, and extinguished
our liability unless otherwise ordered by the direc-
tors. The only possible way the interest accruing
on the State bonds paid into the State Treasury
annually by the railroads, could be made available
and used as a sinking fund, was for the State
through her own officers voluntarily to set aside so 60
much money from the funds in her Treasury; just
as she would so much of her taxes collected, or any
other revenues for a defined State purpose; as to
meet the expenses of her Public School, or any
other State obligation. The practical management
was of her own revenues as a sinking fund to meet
her own obligations.

CAMPBELL WALLACE.

I, C. D. Woodson, a notary public in and for the city of Atlanta, in the State of Georgia, hereby certify that on the second and third days of October, 1879, in the office of the Merchants' Bank of Atlanta, and in said City of Atlanta, I was attended by the counsel, W. Y. C. Humes, for the defendants, and the witness aforesaid; that the said witness was duly sworn and examined, and this deposition was reduced to writing by me, and read by the witness, and by himself subscribed in my presence, and that Exhibits Nos. 1, 2, 3, 4, 5, 6, were introduced in said cause during the taking of said deposition.

Given under my hand and seal of office, this 3d day of October, 1879.

C. D. Woodson,
Notary Public,
Fulton County, Ga.

(Copy.)

EXHIBIT NO. 1 TO CAMPBELL WALLACE'S DEPOSITION.

No. 2. Nashville, Tenn., June 30th, 1860.

Received from the East Tennessee & Georgia R. R. Co., fifteen East Tennessee & Georgia R. R. Co.'s endorsed bonds, each for one thousand dollars, and numbered as follows: Nos. 21, 34, 39, 56, 60, 61, 62, 141, 24, 52, 22, 25, 150, 55 and 146.

These bonds are received on account of the semi-annual payment due by said company as Sinking Fund, being 10,875 dollars, due on the 1st day of April, 1860, and the balance of the fifteen bonds being an advance payment due 1st October, 1860.

ISHAM G. HARRIS, Governor.
J. T. DUNLAP, Comptroller.
} Com'rs of Sinking Fund.

Bonds. 65

(Copy.)

EXHIBIT NO. 2 to CAMPBELL WALLACE'S DEPOSITION.

No. 4. NASHVILLE, TENN., Dec. 22d, 1860.

Received from the East Tennessee & Georgia R. R. Co., seven endorsed bonds, each for one thousand dollars, and numbered as follows: 134, 132, 131, 133, 135, 10, 89. These bonds are received on account of the semi-annual payment due by said 66
company as Sinking Fund on the 1st day of October, 1860, and returned to said company after cancellation, under the act of 1859-60, ch. 93, section 2.

J. T. DUNLAP, Comptroller.
G. P. SMITH, Pres't Bank of Tenn.
} Com'rs of Sinking Fund.

7 Bonds.

67

(Copy.)

EXHIBIT No. 3 TO CAMPBELL WALLACE'S DEPOSITION.

No. 12. NASHVILLE, TENN., Feb'y 5th, 1861.

Received from the East Tenn. and Georgia R. Rd, two Tennessee State Six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 1,127 and 10,629, reinvestment. These bonds 68
are received on account of the semi-annual of interest of the old sink. fund.

J. T. DUNLAP, Comptroller.
G. P. SMITH, Pres't Bank of Tenn.
} Com'rs of Sinking Fund.

2 Bonds.

69 (Copy.)

EXHIBIT No. 4 TO CAMPBELL WALLACE'S DEPOSITION.

NASHVILLE, Tenn., 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the sinking fund of the
70 East Tenn. and Georgia R. Rd. Company, and placed the amount, fourteen thousand dollars, to the credit of said East Tenn. and Georgia R. Rd. Co. The above fourteen bonds thus cancelled were put into the sinking fund of the East Tenn. and Geo. R. Rd. Co. in place of twelve East Tenn. and Va. R. Rd. Co.'s endorsed bonds, and two Nash. and Chatta. R. Rd. Co.'s endorsed bonds previously purchased for account of East Tenn. and Ga. R. Rd. Co.'s sinking fund.

71 G. C. TORBETT,
J. T. DUNLAP,
Sinking Fund Commissioners.

(Copy.)

EXHIBIT No. 5 TO CAMPBELL WALLACE'S DEPOSITION.

72 NASHVILLE, Tenn., Nov. 20, 1861.

Received from the East Tennessee and Georgia Railroad Company, nine Tennessee State six per cent. bonds, each for one thousand dollars, and numbered as follows: Nos. 4,333, 4334, 5,851, 9,584, 9,086, 7,115, 10,415, 4,332, 2,068. These bonds are received on account of the payment due by said company as sinking fund, when next called

for, and are now cancelled under act of 1859-60, 73
ch. 93.

ISHAM G. HARRIS, Governor,
J. T. DUNLAP, Comptroller,
G. C. TORBETT, Pres't Bank of Tenn.
} Comr. of Sinking Fund.

9 Bonds.

74

(Copy.)

EXHIBIT No. 6 TO CAMPBELL WALLACE'S DEPOSITION.

CHATTANOOGA, TENN., June 4th, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. bonds, each for one thousand dollars.

These bonds are received on account of the pay- 75
ment due by said company as sinking fund, and are now cancelled under Act of 1859-60, Ch. 93.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tenn.

100 Bonds.

CHATTANOOGA, June 4th, 1862. 76

Received from the East Tenn. & Ga. R. R'd Company eleven endorsed bonds, each for one thousand dollars, and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. These bonds are received on account of the payment due by said company as sinking fund, and after cancellation re-

77 turned to said company, under Act of 1859-60, Ch. 93, Sec. 2.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tenn.

I, G. W. Blackburn, certify the above is a true copy of the original, on file in my office.

78 In witness whereof, I have hereunto set my hand and seal of office, this 1st day of February, 1868.

G. W. BLACKBURN,
Compt.

79

80

Stipulation.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the M. & O. R. R. Co.,

vs.

THE M. & O. R. R. Co.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MISS & TENN. R. R. Co.

vs.

THE MISS. & TENN. R. R. Co.

It is stipulated between the parties to the above-named suits in order to avoid the trouble, expense and delay incident to the taking of depositions and formal proving of Acts of the State of Tennessee, messages of her Governors and other public documents of said State and of the United States, that either party to said suits may use as evidence in these causes printed copies of any and all Acts of

the Legislature of Tennessee, Message of her Governors, Reports of Comptrollers and other public documents of the State and of the United States, subject to objection on account of incompetency or irrelevancy without having the same certified or authenticated, the above parties, however, reserving the right in the event it should be ascertained by a comparison of said acts and other public documents with the originals, that there is any inaccuracy or error in the same, to have the same corrected; provided that each party shall give the other ten days' notice of the particular acts or documents which he desires to use on the trial of said causes. It is also further stipulated and agreed that the defendants in the above-entitled causes, may use as evidence in these causes, printed or written copies of such depositions as have already been taken, or as may hereafter be taken, in any of the causes begun and pending by plaintiff against the other Tennessee railroads in the Federal Courts of East, Middle and West Tennessee or in the Federal Courts at Louisville, Ky.; that printed or written copies of said depositions taken or to be taken may be filed in the above causes by the defendants as their own depositions without having the same formally sworn to by the parties giving said depositions.

It is further stipulated that should the parties desire to do so they may file additional interrogatories addressed to said witnesses whose depositions have been or may be taken in said causes, which shall be considered as a part of said deposition, said additional interrogaties, however, are to be sworn to by the witnesses.

It is further stipulated between the parties hereto that should the defendants desire to take the depositions of other witnesses they are to have full liberty to do so; and it is agreed that such addi-

tional depositions may be taken in the city of New York by giving counsel of complainants reasonable notice of the time and place of taking of the same; or, if the defendants desire to take deposition or depositions of any witness or witnesses living outside of said city of New York they may do so *ex parte*, and without notice to complainants or his counsel, provided that should the party or parties whose deposition defendant's counsel desire to take live in the cities of Memphis, Nashville, or Knoxville, reasonable notice is to be given to the local counsel of the complainants at those points respectively; and in the event such depositions are taken of a witness a copy of same shall within a reasonable time be forwarded to the counsel of complainants in New York, with liberty to said counsel to cross-examine said witness or witnesses should he desire to do so.

E. L. ANDREWS,
Solr. for Complts.

WRIGHT, FOLKES & WRIGHT,
Solrs. for Respondents.

STIPULATION.

CALVIN AMORY STEVENS, on behalf of the Holders of Tennessee Bonds, issued to the Mobile and Ohio Railroad Company, under Internal Improvement Laws,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY and others.

CALVIN AMORY STEVENS, on behalf of the Holders of Tennessee Bonds, issued to the Mississippi and Tennessee Railroad Company, under Internal Improvement Laws,

vs.

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

It is hereby stipulated and expressly agreed between the parties to the above-named suits, in order to avoid the trouble and expense and delay necessary to the taking of formal proof, that the following are facts proven in these causes :

5 *First.*—That up to the passage of the Internal Improvement Law of February 11th, 1852, the State of Tennessee had never defaulted upon the principal or interest of her public debt; that in 1852 the taxable property of the State of Tennessee was $177,420,305.$\frac{00}{100}$, and that the debt of said State then amounted to only $3,992,856.$\frac{66}{100}$, and that the rate of State tax was only $11\frac{1}{2}$ cents on the one hundred dollars.

6 The straight bonds of the State of Tennessee were, during the years 1850, 1851, 1852 and 1853, quoted on the New York Stock Exchange as follows:

7

8

Quotations of sales of Tennessee State bonds taken from the official reports of the New York Stock Exchange—

DATE OF SALE.			AMOUNT OF SALE.	PRICE.
1850	April	23	1,000 6s	105
"	May	29	1,000 6s	104
"	July	15	1,000 6s	104
"	Nov.	4	2,000 6s	101¼
1851	March	27	5,000 6s	100½
"	April	3	10,000 6s	100½
"	May	17	2,000 6s	100½
1852	Feb'y	24	1,000 6s	102
"	April	9	7,000 6s,'90	105
"	May	31	2,000 5s	92
"	June	17	2,000 6s	110
"	July.....	19	2,000 5s	92
"	Dec	9	5,000 6s,'68	106
1853	June		3,000 6s,'90	108
"	July		7,000 6s	105⅝

Second.—That with the exception of some interest paid in 1867 and 1868, and some paid in 1874 and 1875, the State of Tennessee has paid no interest upon any of its obligations since the commencement of the late war; and the coupons of the bonds of these complainants, up to the first day of January, 1876, and since the beginning of the war, except that paid by the State in 1867-8, and in 1874-5, as previously stated, has nearly all been funded into new bonds of the State of Tennessee under the various funding Acts of said State.

Third.—That the prices of Tennessee State bonds at the New York Stock Exchange in each month from April, 1870, to December, 1875, and during the first six months of 187 , were as follows:

1870.

	New.	Ex. Coup.	Old.	Highest Price.	Lowest Price.	Average Price.
April.....	2193			57⅛	51	542 68673
		299		61	58	579.47909
May.....	2415			57¼	54¼	562.28571
		260		70	59¾	614.53365
June.....	5865			65¾	57¼	612.13162
		783		67⅜	61¾	630.47254
July.....	3621			68¼	58⅜	634.76311
		643		70	61	628.29121
August.....	860			62⅜	59¾	567.43023
		312		64	60	618.42147
September.....		196		62¾	61¾	622.21938
	633			61	60	605.21936
October.....	331			61	60	604.68277
			1	62¼	62⅛	622.50
		142		62⅞	62¼	626.70774
November.....	529			60¼	55¼	580.82884
			150	62	57	604.25
December.....	1370			64¾	57¼	614.08941
			328	65	69	622.51143

1871.

	New.	Old.	Highest Price.	Lowest Price.	Average Price.
January.....	1039		64¾	61	634.45741
		542	64⅝	62¾	638.75922
February.....	360		64¾	62¾	639.57500
		305	64⅞	64	643.40983
March.....	555		65⅝	63⅝	642.78378
		323	65⅝	63⅝	642.98761
April.....	582		67⅞	65½	664.06357
		438	67⅜	65⅝	662.82534
May.....	1385		72⅝	67⅛	703.12454
		761	72⅝	67¼	713.71287
June.....	972		73	70⅛	715.75874
		344	73⅛	71	718.16133
July.....	158		72⅜	71½	718.81329
		179	72¾	71½	719.81843
August.....	371		76⅝	73	750.55256
		234	76	73	748.63782
September.....	232		75	71⅛	723.58297
		241	74⅞	71	729.83402
October.....		357	72	64¼	660.65826
	799		71¾	63½	671.89299
November.....		272	68	64	659.97702
	467		68½	64	654.30942
December.....		330	67¼	61	638.54924
	519		67	61¼	639.28709

1872.

	Old.	New.	Highest Price.	Lowest Price.	Average Price.
January	212		68	63½	652.77122
		373	67¾	63½	653.67962
February	216		67¼	65½	668.28472
		607	67⅞	65½	652.54736
March	88		67	66	666.78840
		184	67⅛	66	667.88043
April	268		70½	66¾	677.66790
		104	70¼	66¾	687.07932
May	421		73½	68¼	718.23337
		460	73½	68¼	714.25
June	298		75	72	737.26929
		149	75	72	731.27576
July	176		75	72½	733.79261
		232	75⅛	72¾	723.16271
August	155		74½	73¼	737.91934
		320	75	73¼	737.77734
September	143		74	72	728.07692
		140	74⅛	71	728.08928
October	223		75⅛	72½	732.99887
		203	75½	72½	731.60714
November	226		76	73	739.05973
		132	76¼	73½	747.23484
December	233		82½	76	794.71861
		178	83	76	811.59410

1873.

	Old.	New.	Highest Price.	Lowest Price.	Average Price.
January	226		82¼	79¼	806.58834
		244	82½	79¾	807.80737
February	717		83½	79	805.36784
		735	83½	78½	798.79591
March	768		86	80	820.55826
		1066	87	79½	819.00680
April	204		80¾	77½	797.67769
		145	80¼	78½	792.84482
May	145		82	79	812.09482
		240	82	78½	810.03645
June	51		81	79	797.30392
		187	80½	78½	792.26604
July	74		81¾	80¼	809.40878
		174	81½	79¾	810.
August		101	82¼	81⅝	820.27227
	30		82½	81¾	822.
September	23		82⅜	72	798.48484
		100	82¼	72½	803.77500
October	194		75	68	707.20360
		128	74¾	69	716.72851
November	48		72¼	62	665.93750
		141	72½	62	698.74113
December	70		81¼	73	782.03571
		110	81	71¼	780.52272

1874.

	Old.	New Series.	Old Ex. Coupon.	New Ex. Coupon.	New.	Highest Price.	Lowest Price.	Average Price.
21 January	227					81½	79	800.46211
		20				63¾	62	629.60
			16			63½	63	633.12500
				14		63	62½	630.71428
					38	81	79½	803.98026
February	147					91	81½	867.79061
				18		70¾	66	680.62500
					55	91	82¼	878.81818
			57			71¼	63½	689.94736
22		35				71½	63½	684.57142
March		106				71½	68½	700.45990
	148					91¾	89	909.17229
				113		71¼	69½	706.89159
					71	91½	88¼	899.29577
			137			72	68⅝	702.68248
April		118				68	64¼	668.58050
					15	88	84	855.16666
	25					88¾	84	868.10
			56			68½	64	666.98660
				52		67¾	64	644.47011
May	66					85	82½	832.31060
		64				65½	63	639.55007
			136			65¼	63	641.11213
				96		64¾	61	628.42447
					83	84¼	82¼	833.88554
23 June		126				63½	61	620.46626
			83			63½	61	625.52710
					9	80	79½	795.55555
	12					81	79	804.16666
				49		64	61	617.04081
July		62				59⅜	53	545.48387
			75			60½	53½	570.85
				21		60	54½	571.07142
	4					70	79	790.
					2	54	54	540.
August					5	75½	75½	735.
		57				58	56	573.66228
				56		58	56	576.46875
	23					78	77	777.82608
			93			58	54½	572.21774
24 September		43				57	49	545.
				38		57¼	50	548.78289
			31			57½	52	562.09667
	15					77	76	766.
October	1					72	72	720.
			48			55⅝	52	535.78125
				52		56	51	547.88461
		43				56	51	544.85465
November			166			57⅞	55	574.05873
	12					75⅜	74¼	748.125
					1	57	55	559.77040
		49				70	70	700.
				111		57⅛	54⅞	558.88513
December	134					60	57	583.56243
				146		60	56½	582.85958
			99			59	57	578.59090

1875.

	Old.	New Series.	Old Ex. Coupon.	New Ex. Coupon.	New.	Coupon Ex.	Highest Price.	Lowest Price.	Average Price.	
January.....		71					55¼	44	499.85915	
			137				56⅛	43	513.43978	
				193			56	47	521.26295	
					2		78¾	78¾	787.50	
						15	55½	55½	555.	
February.... ...				34			49½	45	472.64705	
			60				50	46	482.58333	
		30					48	45	456.70833	26
	1						67½	67½	675.	
March.....					1		65	65	650.	
				54			48¼	47	477.17592	
		86					49	47¼	479.89825	
		84					48	46	474.22619	
April				69	1		70	70	700.	
			115				53⅞	49	529.74657	
							55	49¾	537.16304	
		46					53½	50	517.77173	
May.....					34		71½	50	507.64705	
	68						51¼	50⅛	509.06250	
				24			51	49½	501.66666	
			44				51¾	50	507.55681	
		97					51	49½	502.83814	
June					34		54⅞	45¼	513.12500	
	223						55	46	505.19618	27
		94					54⅜	45	486.59574	
July.....	190						51¼	47½	500.34868	
		22					50	47½	487.72727	
					85		50⅞	47½	494.41176	
August..					72		53	49⅜	510.31250	
	113						53½	50¼	518.86061	
		35					52½	50	504.85714	
				11			51	50	505.11363	
September.....	12						52	51½	517.29166	
		18					51	50	508.05555	
October.....					49		50	46	470.25510	
		47					47⅜	45½	463.24468	
	107						48½	52½	501.03925	
November.... ..		71					46¾	45	463.75	
	180						49	45	471.00694	28
					62		47	45	458.48790	
December.....	126						47	40¾	431.18055	
					129		45	38¼	422.82945	
		91					45	38¼	409.07967	

29 1879.

	New.	Old.	New Series.	Highest Price.	Lowest Price.	Average Price.
January.....	4			29¾	26	275.93750
		12		37	36	367.08333
			6	28	26	263.33333
February.....		19		42	36½	394.21052
	20			28½	25	271.
			30	29	24¾	270.54833
March		5		35⅛	35	350.25
30			40	28¼	25	277.43750
	39			29½	24	259.26282
April.....		21		39½	34	361.07142
	26			32	30	304.61538
			6	30¾	30	301.25
May.....		68		35½	35	353.80514
	3			33	31¾	323.33333
			16	33	30½	320.93750
June.....		8		35⅛	34	345.15625
	24			32¾	31	314.27083
			3	32	30½	314.16666
July		34		35½	33½	344.00735
			2	32⅝	32½	325.62500
	27			34¼	31	318.14814

31 That said bonds were principally negotiated and sold in New York City, and were either made payable to bearer, using those words, or to blank or order, leaving the blank unfilled, or if filled it was done with some name other than the companies to which they were loaned; that the name of said Mobile and Ohio Railroad Company, nor of the said Mississippi & Tennessee Railroad Company, does not in any way appear either in or upon any of said bonds so loaned them by said State under said In-
32 ternal Improvement laws, and that the same is true as to all of the railroad companies receiving bonds under said Internal Improvement laws.

Fourth.—That after the issue of bonds to the various railroad companies under said Internal Improvement laws, there was no difference in the money and stock markets in price between the bonds so

loaned to said railroad companies, and those issued 33
by the State to raise the capital of the Bank of Tennessee or to build her state house; nor was there any difference in price between the bonds loaned to the most valuable railroads and those loaned to the most worthless—except that within the last two years a difference has, in both the above cases, arisen on limited transactions, in open market, in New York—but no difference has ever existed on the New York Stock Exchange.

34

Fifth.—That there is nothing upon the books of said Mobile and Ohio Railroad Company or said Mississippi and Tennessee Railroad Company which shows the numbers, dates or series of the bonds so loaned them; said books simply show upon this head that so many bonds aggregating so much money were received by said companies, and the State of Tennessee is credited by that amount, and no record was kept by said companies of said numbers, dates or series, nor have 35
they any knowledge of the same.

Sixth.—That the books of the Comptroller of said State show, and the fact is that the said railroad companies in their payments to the sinking fund, paid in any of the bonds of said State or in cash indiscriminately, and that the sinking fund commissioners in their investments of the sinking fund, invested in any of the bonds of the State without regard to the purposes for which they had been 36
issued.

Seventh.—That the State of Tennessee had loaned and issued her bonds to some of her Internal Improvement Companies—she had endorsed the bonds of some of the other companies, and has issued bonds to build her State House and for other purely State purposes.

37 *Eighth.*—That the various Acts of the Legislature referred to in the answers of said Mobile and Ohio Railroad Company and said Mississippi and Tennessee Railroad Company were public and notorious, and the various acts and doings of said State officials in respect of these Internal Improvement Acts were as public as their other official acts. That no holder of any Tennessee bond ever objected to or protested against the authority assumed by the State in said acts, nor did any
38 bondholder object to the destruction or cancellation of any of the secureties which said companies had paid into the sinking fund—or to said State's using for its own purposes, money paid into the Treasury of said State to meet the interest accruing on said bonds so loaned said companies—or paid into the sinking fund—which said State did in divers instances do—applying said money so paid to other State uses than paying the interest on her debt. This stipulation is given subject to the
39 weight to be attached to the opinion of Judges Davies and Davis opinion solicited by the then committee of Tennessee bondholders.

Ninth.—No holder of any Tennessee bond originally loaned to said companies, nor to any railroad companies receiving aid under Internal Improvement Laws, ever presented coupons of same to said companies nor either of them, and demanded payment of same.
40

Tenth.—As long as the Bank of Tennessee was in operation it was regarded as the fiscal agent of the State of Tennessee. No railroad company receiving State aid under Internal Improvement Laws had at any time any banker or correspondent in New York to pay the interest on the bonds so loaned to it. None of said companies ever retained in its

possession the coupons that had been paid on the 41
bonds loaned to it.

Eleventh—That said Mobile & Ohio Railroad Company and said Mississippi & Tennessee Railroad Company have issued the various series of bonds and executed the mortgages and deeds in trust set forth in their respective answers; and that Exhibits 1, 2, 3, 4, 5 and 6, to the answer of said Mobile & Ohio Railroad Company, and Exhibit No. 1, to the answer of said Mississippi and Tennessee Railroad Railroad Company, are true copies of the originals 42
of said documents, and the said originals need not be proved or produced; but said copies may be read in lieu thereof; that the originals of the various mortgages and deeds of trust and bonds made and executed by said companies, or either of them, need not be produced or proved, but printed or written copies of the same may be read in evidence on the hearing of these causes; said copies to have the same force and effect and no more, of such originals and subject to like exceptions for competency 43
or relevancy.

Twelfth.—That the Tennessee Substitution bonds issued by said Mobile and Ohio Railroad Company were negotiated and sold to foreigners residing in Europe; that they purchased said bonds in open market, and paid exceeding 90 cents on the dollar in gold for the same, said price included, however, accrued interest for six months; that they purchased in good faith, and honestly believing that 44
said bonds were in all respects regular and valid, and secured as they purported to be on their face, and without notice or knowledge of complainant's claim, and those in like right with him, except in so far as knowledge and notice may be implied by law of the existence of said Act of February 11th, 1852, and the acts amendatory thereof, and except

45 in so far as the said purchasers of said substitution bonds may be charged by law with notice of the opinion of Davies and Davis of date May 2, 1870, addressed to J. J. Donelson, Chairman of Committee of Tennessee bondholders, a copy of which is herewith filed, marked Exhibit 1, and also except so far as the Comptroller's certificate charges them with notice.

Thirteenth.—That the scheme of reorganization
46 and compromise entered into in October, 1876, between said Mobile & Ohio Railroad Company, and Hays, Pierson & Dupuy, Committee, &c., and the creditors of said company, was entered into in good faith by all parties, and in the belief that said substitution bonds were regularly issued, in all respects valid, and secured by the lien which the State had on the property of said company in Tennessee; and in ignorance of any claim on the part of the holders of the Tennessee bonds originally loaned to said company; that they had a prior
47 lien on the same property; except in so far as they may by law be charged with notice, by reason of the existence of said acts, and of the opinion of Davies & Davis aforesaid. But the issues of the new securities under said reorganization had not been made thereunder until after the priority of lien asserted in this suit had been raised in the Mobile and Ohio litigation, and litigated in the Circuit and Supreme Courts of the United States.

48 E. L. ANDREWS,
Solicitor for Complainants.

WRIGHT, FOLKES & WRIGHT,
Solicitors for Respondents.

Stipulation.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, &c., *vs.* THE MOBILE AND OHIO RAILROAD COMPANY.	In Equity.
CALVIN AMORY STEVENS, &c., *vs.* THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.	

It is hereby stipulated by and between the parties herein that the annexed is a true copy of the document it purports to be.

WRIGHT, FOLKES & WRIGHT,
Sol's for Respondent.

E. L. ANDREWS,
Sol'r for Complainants.

THE

CREDIT AND RESOURCES

OF THE

STATE OF TENNESSEE.

The following communication to the New York *Times*, written by the undersigned, is published in pamphlet form at the request of several former citizens of Tennessee now resident in New York. All the statistical facts given are derived from the official reports of the officers of the State.

S. WATSON,
Agent for the State of Tennessee.

TENNESSEE STATE CREDIT AND RESOURCES.

To the Editor of the New York Times:

A communication appeared in your paper of the 1st of January, from your correspondent in Nashville, signed "Philo," which does great injustice to the State of Tennessee, and requires some notice from the friends of the State.

The political part of your correspondent's letter I have nothing to do with, excepting so far as it relates to emigration. "Philo" asserts that Northern men are driven away from Tennessee, and that there are not now in Tennessee one-half as many men of Northern birth as there were two years ago. That some Northern men in consequence of their disappointment in their business calculations, and some in consequence of hostility excited by their political course, have left the State may be true, but a very large number remain. They are scattered all over the State, and can be counted by thousands. The

writer of this knows that the rich iron regions below 9
Nashville, lying between the Cumberland and Tennessee River, is rapidly attracting emigration. Substantial men from the North have come there and invested their hundreds of thousands in iron property, and in iron works that have been idle during the war, and are now putting them into operation. It is also known to the writer that Northern emigration is setting in quite rapidly to the counties bordering on the Chattanooga Railroad and its branches. In three counties they have brought in with them 10
the past year capital largely exceeding $200,000. The Nashville press chronicles almost every week the arrival of parties to investigate the advantages and resources of Tennessee; notwithstanding the erroneous impressions of the State spread abroad by the political press and such correspondents as "Philo."

The bitterness of party feeling is very much softtening down in Tennesse. It is true that men who come into the State as blatant politicians, and who expect to live upon politics, do excite the enmity of 11
the political party against which they array themselves; but men who come into the State to cast their destinies with its people by accumulating wealth and developing the resources of the country, are cordially welcomed, everywhere and by everybody.

But the parts of your correspondent's letter which I wish especially to notice are his attacks upon the good faith of the State, and his efforts to ruin its credit by charging upon the State reckless extravagance in aiding railroads, most of which he deems 12
to be worthless.

"Philo" charges that the State refused, upon a technicality, to take the notes of the old State Bank. She refused to take them because she did not consider herself bound in honor and good faith to do so. An attempt was made by some of her citizens to force this depreciated currency upon her for taxes,

13 but the Supreme Court of the State, composed of men of the highest integrity and ability, unanimously decided that she was under no obligations to do so; and this decision has the sanction of the best legal minds in the State. The Bank of Tennessee is now being wound up. Its debtors can pay their debts in the notes of the bank. The policy of the State is to let as much of the circulation of the bank be redeemed in this way as possible, and after the debts are paid, if any notes remain unredeemed,
14 and if there should be even a moral obligation upon the State to redeem them, it will certainly do so. For in no State is the fidelity to obligations more deeply seated than in Tennessee. This has been proved by her past and will be proved by her future history. The word "repudiation" is an odious one to every Tennesseean. No political press and no demagogue of any political party has ever dared utter it to her people.

But the injurious charge, or insinuation rather, is
15 made by your correspondent, that the State has been guilty of reckless extravagance in aiding worthless railroads. That, in an appropriation of several millions of dollars, some roads should get aid that are not deserving, would of course be expected. But a detailed examination of railroads of Tennessee will show that there are but few if any roads of this character aided.

The Edgefield and Kentucky Railroad runs from Nashville to the Tennessee and Kentucky State line.
16 There it was expected to be united to the Henderson and Nashville Road, which runs from the point of junction through Hopkinsville and Madisonville to Hendersonville and Evansville on the Ohio River. The Kentucky Road, not having been completed before the war, and the Edgefield and Kentucky Road consequently ending in the woods, its interest has never been paid. But the Henderson and Nashville

is now in rapid progress. The road is graded from 17
the State line north to Hopkinsville, a distance of about 25 miles, and the iron rails probably laid by this time to that point. Much of the road is also graded from the Ohio River south, and a good deal of track laid.

The length of these two roads is 150 miles—fifty miles in Tennessee and one hundred in Kentucky. They run through the richest agricultural region in the West. Seventy-five miles from Nashville they strike an inexhaustible bed of rich bituminous coal. 18
There are three strata of this coal, one of them a little over six feet in thickness, and the road runs just below the lowest strata. At Evansville these roads are united to the whole system of railroads in the great Northwest, and will make almost an air line communication with Chicago, and it is but a few miles further to New York by this route than by the Louisville and Nashville Road. The aid of $300,000 given to the Edgefield and Kentucky Road will secure the immediate completion of the Kentucky end 19
of the road to the coal mines. Thus bringing these rich mines to Nashville and the whole of Middle and West Tennessee. Can there be a doubt that the future coal trade alone over the Edgefield and Kentucky Road will enable it to pay the interest on its debt to the State?

The completion of the road referred to will also greatly benefit the Memphis and Ohio, and the Memphis, Clarksville and Louisville Road. These two roads together form a line of road running from Mem- 20
phis through Clarksville in the direction of Bowling Green, Kentucky, and intersecting the Nashville and Henderson Road at the State line. One of them passes through the rich iron region lying between the Cumberland and Tennessee Rivers. The supply of coal for Memphis, Clarksville, the iron works and all intermediate points, must go over these roads,

thereby greatly advancing their future paying value. These roads have not heretofore, since the war, paid their interest. But so great is the confidence of the Louisville and Nashville Railroad Company in the future of these roads, that that Company, one of the wealthiest and most ably managed railroad corporations in the United States, has leased the Memphis and Ohio Road for ten years, and is now paying its interest on its debt, and has proposed to buy the Memphis, Clarksville and Louisville Road, offering to pay its floating debt, the back interest due the State, amounting now to $220,272, the whole of its debt to the State, and also to pay the stockholders a portion of their stock. Can any stronger evidence be given of the future paying value of these roads? The payment of their interest hereafter is certainly beyond a doubt.

One of the roads aided by the last act of the Legislature is the Nashville and Northwestern. This runs from Nashville to the Mississippi river, and has its terminus on that river, in the edge of Kentucky. On the opposite side of the Mississippi, it meets the Iron Mountain Railroad, which is being built from St. Louis down the western bank of that river. An appropriation has also been made to enable the Northwestern road to build a short branch, which will connect it with the roads leading to New Orleans and Memphis. The Nashville and Northwestern road has but very recently been completed to the Mississippi, and is unprovided with rolling stock, and of course could not be expected to pay its interest. The recent appropriations of the Legislature will fully equip it and build the branch referred to, and Nashville will then have by this road a very direct communication with St. Louis, the shortest and most direct communication with New Orleans, and almost an air-line route to Memphis. Ought not a road running part

of the way through a rich iron region, running 25
over the fertile soil of West Tennessee, and having such connections, be relied on to pay at least its interest on its debt to the State?

The Nashville and Decatur road is one of the roads aided. It crosses some very winding streams, and has an unusual number of bridges and a large amount of trestle work, all of which needs re-building. It is — miles long, and runs from Nashville to Decatur, Alabama. Means have been provided for its extension to Montgomery in Alabama. This, 26
when completed, will give Nashville almost an air-line communication over this road to Mobile and Pensacola on the Gulf of Mexico. This road has always paid its interest out of its profits, and will be still more certain to do so in the future.

The Nashville and Chattanooga road has always paid its interest and needs no aid. This road has two branches leading off from it—one, called the McMinnville and Manchester, starting about seventy-five miles from Nashville and running north- 27
wardly to McMinnville, thirty-four miles in length; the other, called the Winchester and Alabama road, starting about eighty-five miles from Nashville, running southwardly through Winchester to Fayetteville, thirty-eight miles in length. The rolling stock of these roads was run off, their depots and bridges destroyed, and all the iron rails on both roads removed elsewhere by the United States military authorities. The McMinnville and Manchester road has just been repaired, and the appropriation 28
to the Winchester and Alabama road has been made to enable it to complete its repairs. Both roads were run by the Chattanooga road before the war. The Southwestern road is to be a continuation of the McMinnville and Manchester road, north. The building of this road will be rendered unnecessary by the building of the Nashville and Pacific Railroad.

The Memphis and Little Rock Railroad, although out of the State, is really a Tennessee road, being built principally by Tennessee capital. This road was almost entirely destroyed by the war, and has been wholly unable to pay its interest. But it is being re-built, and contracts have been entered into for its entire completion. Can any intelligent man doubt that a road, running from the capital of the State of Arkansas to the principal commercial city of Tennessee, will pay its interest on its debt to the State when it is re-built?

The Memphis and Charleston Road, although badly crippled by the war, has promptly paid its interest, and so have the Mobile and Ohio, the Mississippi Central and the Mississippi and Tennessee roads.

The East Tennessee and Georgia and the East Tennessee and Virginia roads have always paid their interest promptly, and need no aid.

The Knoxville and Kentucky road has paid its interest. It runs from Knoxville through the rich coal fields of East Tennessee, and it is intended to meet at the Kentucky State line the Lebanon branch of the Louisville and Nashville Railroad. It is already completed thirty-two miles, has fifteen additional miles graded, and is supplied with rolling stock for its local traffic. The appropriation of $800,000 will certainly complete it to the State line. It has already penetrated the coal fields, and is supplying Knoxville with coal, and over this road will be transported the coal to supply Macon and Augusta, and other intermediate points in Georgia. It not only opens up the rich coal fields and iron mines of East Tennessee, but on its completion will give the fertile valleys of that section of the State access to the markets of the country, both North and South. Its coal traffic alone should pay the interest on its debt.

The Knoxville and Charleston road, "Philo" as- 33
serts, owe $615,000 and runs but one mile. This is wholly untrue. This road is nearly completed sixteen miles, and when finished that distance, and equipped, will owe the State only $325,000 in all. This road is to meet a road being built from Charleston, in a direct line to Knoxville.

The Cincinnati and Cumberland Gap Railroad is now running twenty-five miles, with its grading completed twenty miles further, at which point it meets at the North Carolina line a road now build- 34
ing from Asheville. These two latter roads, when completed, will give Knoxville and East Tennessee direct connection with the seaboard in the Southern Atlantic States, and thus render her system of railroads complete, and open up to the world her rich mineral resources, and bring the products of her rich valleys to the nearest and best markets, both North and South.

The Nashville and Pacific Railroad is another road that is to receive the aid of the State. But it 35
can receive no aid until its stockholders grade thirty miles of the road and have it ready for the iron. It then receives State aid to iron it, and upon every additional twenty miles being thus graded it is to receive the State aid to iron the twenty miles. The road is destined to run from Nashville to Knoxville, and will at some day run directly to Bristol on the Virginia and Tennessee State line, there meeting the railroads of Virginia that lead directly to Norfolk. Its completion, and this is rendered 36
certain, and the completion of the short branch of the Nashville and Northwestern Railroad before referred to, will furnish almost an air line of railroad from Norfolk in Virginia through Nashville and Memphis to Little Rock. No one can doubt that this in a few years will be extended to the Pacific, either to the Port of Guayamas, on the Gulf of

California, or to some point in the State of California. This route will run through the richest agricultural part of the United States, will be free from ice and snow, and the shortest route from the Atlantic to the Pacific. New York will yet see the day when her shortest and best highway to the Pacific Ocean will be through the State of Tennessee, and over her projected Nashville and Pacific road.

We have given the above detailed description of the railroads in Tennessee, with her connections, so that every one may be enabled to judge of the importance of each road, and the perfection of her entire system. It must be obvious that there are very few of her roads, and those very short ones, that are not necessary to the development of her resources. When finished, Knoxville will be the centre of the system in the East, and her roads will connect her with all important points in the Union. Memphis has her system of roads leading to all parts of the Mississippi Valley.

Nashville, the capital of the State, is the centre of the whole system, and her railroads, when completed, will give her close connection with all the cities of the Northwest, and make her the point through which the great highway from the Atlantic to the Pacific must pass. Has not Tennessee shown her wisdom in pledging herself to the support of such a system of roads?

At the close of the war almost all of the roads of Tennessee were nearly in ruins. The State immediately came to their aid, and set them upon their feet again; and finding that additional aid was necessary to fully repair her roads and fully complete her system, she has by the recent act of her Legislature promised additional aid, that may reach the sum of about $4,000,000. But it must be years before this entire sum can be called for, a large por-

tion of this aid being dependent upon the prior 41
grading of the roads by the stockholders. The State has not acted hastily nor rashly in this legislation, but after full investigation of the claims of each road, and careful consideration of the importance of her entire system. The most enlightened of her tax payers believe her action to have been one of wise and judicious liberality, and so we believe those will think who are interested in her securities.

Prior to the war every road in Tennessee, except- 42
ing the Edgefield and Kentucky, and perhaps the Winchester and Alabama roads, paid the interest on the bonds loaned them. The receipts of all the main lines of railroads, and it is believed almost all the roads in Tennessee, are greater now than before the war.

The important question for the bondholder now is: What security have I for the payment of the principal and interest of my bond? The State debt proper is only about $4,000,000. The railroads 43
and all their rolling stock are mortgaged to the State to secure the payment of bonds loaned. This mortgage, as bondholders must know, inures to their benefit. For the payment of $29,000,000 of bonds, which will be the entire amount of bonds issued to the roads, including those that may be issued under the recent act of the Legislature, the bondholders have as security roads which, when completed, will be nearly 2,000 miles in length, and which will have cost and which will be worth fully $70,000,000. In 44
addition to that they have the whole resources of the State solemnly pledged to them. And what are the taxable resources of the State? On the 19th of December last there were due the State for taxes $1,108,900. As all the real and personal estate of the taxpayer is responsible for his taxes, a large proportion of the above amount must certainly be

paid. The present tax law, under which the taxes of 1868 will be levied, increases the tax fully fifty per cent. The receipts from all sources the past year, exclusive of interest paid by railroads, were $1,517,472. Add fifty per cent. to this will make $2,276,208. To this should also be added what may be collected from back taxes. The expenditures of the State last year, exclusive of interest, were $939,-404. Of this amount at least $344,970 were extraordinary expenses, and will not be incurred this year. This would make the State expenditures this year $654,433, which, deducted from her tax receipts, $2,276,208, would leave $1,621,775, a surplus amply sufficient to make up all possible short-comings of railroads in paying their interest, and leaving also a very large amount to be appropriated to the aid of her common schools, a system which she is just inaugurating, combining the best features of the systems of the Northern States.

The pecuniary condition of the State of Tennessee and its resources are but little understood. Outside of East Tennessee, and aside from the destruction of her railroads, and the loss of her slave property, Tennessee was but little injured by the war. The Federal army got possession of Middle and West Tennessee early in 1862. Her citizens were enabled to get rid of all their Confederate currency without a sacrifice. It is true a large amount of her stock of animals were taken by the armies, but the armies, as a general rule, paid for what was taken. The army expenditures were larger in Tennessee than in any other State, and these expenditures enriched its citizens. The city of Nashville certainly came out of the war largely increased in population and greatly advanced in wealth. Everything was bought and sold for cash, consequently no debt was contracted at home or abroad, and as evidence of this we have no stop laws and no serious attempt to pass

any; and we appeal to the merchants of New York as an evidence of the fact, that no merchants of any State pay more promptly than the merchants of Tennessee. Her black labor being formerly owned in small numbers, and many of them working side by side with their masters, labor is much less demoralized than in the more Southern States, as is demonstrated by the abundance of the present crop. Her crop of wheat the last year was fair, and farmers obtained for it from $2 to 2.50 per bushel, a price wholly unprecedented in Tennessee. Her corn crop was a full one, and its surplus is now finding its way over the railways of New York to this city. Her crop of cotton has not been as large for years. Nashville has already received a larger number of bales than the average of entire years prior to this, and she will certainly receive an amount this year more than double her annual receipts before the war. Clarksville, about sixty miles below her on the Cumberland River, was one of the largest interior tobacco markets in the Union before the war; the past year her receipts of tobacco in dollars and cents were greater than they have ever been at any former period.

In addition to her present productive wealth, she has vast resources yet untouched. She has valuable pine timber, larger forests of cedar than any State in the Union. She has scattered all over her every kind of timber used in building or the mechanic arts, except rosewood and mahogany. She has beneath her soil every variety of minerals used in the mechanic arts, and all of it rich in quality and abundant in quantity, and she has a climate and soil capable of producing successfully every article of raw material used in manufacturing.

And yet with all these vast resources, with her sound pecuniary condition, her admirable system of railroads almost completed, and her mercantile and

financial honor untarnished, it is evident from the prices of her bonds, that fears exist that she will falter in paying the interest upon her debt. Why should Tennessee be distrusted? Before the close of the past year she placed her money with her fiscal agent in this city, amply sufficient to pay every dollar of her present January interest.

Did she not, at the close of the war, meet the wishes of her creditors, and fund all her accumulated interest?

With all her business interests disorganized by the war, with her labor in its transition state from slavery to freedom, with her railroads just rising from their ruins, with an imperfect tax system, she has heretofore faithfully met her obligations.

Why should it be feared that she will falter now, when her labor is annually producing a return greater in value than at any former period in her history? When emigration is daily bringing additional labor and capital to her borders. When her railroads are almost rebuilt, aud daily increasing their capacity to pay their dues to the State, and when her future receipts from taxation will annually exceed her ordinary expenses largely over $1,000,000. Surely a knowledge of the condition and resources of Tennessee, the known spirit and character of her people, the well-known unalterable determination of legislators and all her State officials to maintain her public faith inviolate, ought to satisfy every one that the interest on her public debt will ever be promptly paid, and that all her obligations will be honorably and faithfully fulfilled.

S. W.

57

RAILROADS NOW PAYING AND THAT ALWAYS HAVE PAID THEIR INTEREST.

	Bonds loaned, including interest funded	Bonds endorsed by the State.
East Tennessee and Virginia	$2,688,100	$197,000
Memphis and Charleston	1,643,980	
Nashville and Decatur	2,115,176	
Nashville and Chattanooga	395,000	1,546,000
East Tennessee and Georgia	1,690,120	126,000
Knoxville and Kentucky	1,353,200	
Memphis and Ohio	2,396,110	
Mobile and Ohio	1,684,800	
Mississippi and Tennessee	317,800	
Mississippi Central	1,078,980	
Knoxville and Charleston	300,000	
	$15,663,266	

58

ROADS NOT NOW PAYING, BUT WHICH WILL CERTAINLY PAY, AND PROBABLY BY THE END OF THE YEAR.

Edgfield and Kentucky	$1,070,167	
Memphis, Clarksville and Louisville	1,894,600	
Nashville and Northwestern	3,064,850	
	$6,029,617	

59

ROADS NOT NOW PAYING

Cincin., Cumb. Gap and Charleston	$985,680	
McMinnville and Manchester	851,360	
Winchester and Alabama	1,098,259	
Rogersville and Jefferson	393,160	
Memphis and Little Rock	105,000	350,000
	$3,433,459	

60

STIPULATION.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mobile & Ohio Railroad Company.

vs.

THE MOBILE & OHIO RAILROAD COMPANY, WILLIAM B. DUNCAN and ANREDW F. ELLIOTT.

No. 319.

In the above-named suit, pending in equity, in the Circuit Court of the United States, for the Western District of Tennessee, at Memphis, the defendant assents to the taking of testimony by the complainants upon oral interrogatories, before William H. DeLancey, notary public, at his office, number 52 Broadway, in the city of New York, and State of New York, commencing on the 13th day of February, 1880, at 12 o'clock noon, and continuing from day to day thereafter until the witnesses produced at said place before said William H. DeLancey, have been fully examined.

And the defendant waive all notice as to the taking of said testimony, and agree that said William H. DeLancey may take the same as if he were an examiner of said Court. It being understood that the defendant shall have the privilege of being present in person, or by their counsel, at said examination and cross-examining the witnesses who may be examined.

Memphis, February 4th, 1880.

WRIGHT, FOLKES & WRIGHT,
Of Counsel for Defendants.

5

STIPULATION.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi & Tennessee Railroad Company,	No. 318.
6 *vs.*	
THE MISSISSIPPI & TENNESSEE RAILROAD COMPANY.	

In the above-named suit, pending in equity, in the Circuit Court of the United States, for the Western District of Tennessee, at Memphis, the defendant assents to the taking of testimony by the complain-
7 ants upon oral interrogatories, before William H. DeLancey, notary public, at his office, number 52 Broadway, in the city of New York, and State of New York, commencing on the 13th day of February, 1880, at 12 o'clock noon, and continuing from day to day thereafter until the witnesses produced at said place before said William H. DeLancey, have been fully examined.

And the defendant waives all notice as to the taking of said testimony, and agree that said William
8 H. DeLancey may take the same as if he were an examiner of said Court. It being understood that the defendant shall have the privilege of being present by their counsel, at said examination and cross-examining the witnesses who may be examined.

Memphis, February 4th, 1880.

WRIGHT, FOLKES & WRIGHT,
Of Counsel for Defendants.

QUARTERMASTER GENERAL'S OFFICE,
WASHINGTON, D. C., *28th Sept.*, 1865.

GENERAL ORDERS,
No. 56.

The following order, by the President of the United States, in relation to the relinquishment of the Government's control over all railroads in the State of Tennessee, and their continuations in adjoining States, now occupied by the United States military authorities, and no longer needed for military purposes, is published for the information of all officers and agents of the Quartermaster's Department.

M. C. MEIGS,
Brevet Major General, U. S. A.,
Quartermaster General.

WAR DEPARTMENT,

WASHINGTON, *August 8th*, 1865.

MAJOR-GENERAL GEORGE H. THOMAS,
Commanding Military Division of Tennessee,
Nashville, Tennessee.

GENERAL:

It having been determined by the Government to relinquish control over all railroads in the State of

5 Tennessee, and their continuations in adjoining States, that have been in charge of, and are now occupied by, the United States military authorities, and no longer needed for military purposes, you are hereby authorized and directed to turn over the same to the respective owners thereof, at as early a date as practicable, causing, in all cases of transfer as aforesaid, the following regulations to be observed and carried out :

6 1. Each and every Company will be required to reorganize and elect a Board of Directors, whose loyalty shall be established to your satisfaction.

2. You will cause to be made out in triplicate, by such person or persons as you may indicate, a complete inventory of the rolling stock, tools, and other materials and property on each road.

3. Separate inventories will be, in the same man-
7 ner, made of the rolling stock and other property originally belonging to each of said roads, and that furnished by and belonging to the Government.

4. Each Company will be required to give bonds satisfactory to the Government that they will, in twelve months from the date of transfer as aforesaid, or such other reasonable time as may be agreed upon, pay a fair valuation for the Government property turned over to said Companies, the same being first
8 appraised by competent and disinterested parties at a fair valuation, the United States reserving all Government dues for carrying mails, and other service performed by each Company, until said obligations are paid ; and if, at the maturity of said debt, the amount of Government dues, retained as aforesaid, does not liquidate the same, the balance is to be paid by the Company in money.

5. Tabular statements will be made of all expenditures by the Government for repairing each road, with a full statement of receipts from private freights passage, and other sources; also a full statement of all transportation performed on Government account giving the number of persons transported, and amount of freight, and the distance carried in each case—all of said reports or tabular statements to be made in triplicate, one each for the Secretary of War, the Military Headquarters of the Department, and the Railroad Company.

6. All railroads in Tennessee will be required to pay all arrearages of interest due on the bonds issued by that State, prior to the date of its pretended secession from the Union, to aid in the construction of said roads, before any dividends are declared or paid to the stockholders thereof.

7. Buildings erected for Government purposes on the line of railroads, and not valuable or useful for the business of said companies, should not form a legitimate charge against such companies; nor should they be charged for rebuilding houses, bridges, or other structures which were destroyed by the Federal army.

8. You are authorized to give any orders to Quartermasters within your Division, which you may deem necessary to carry into execution this order.

By order of the President:

EDWIN M. STANTON,
Secretary of War.

SUPREME COURT OF THE UNITED STATES.

CALVIN AMORY STEVENS, *et al.*,

vs.

THE MOBILE AND OHIO RAILROAD CO., *et al.*

It is hereby stipulated that the record in this case, upon which the case is to be argued before the Supreme Court of the United States, shall be amended by adding thereto the following documents:

Petition of Eugene Kelly and John T. Terry to be made co-complainants; order upon same, and formal amendments to bill,

Order making Saladin and others defendants,

Answer of William Butler Duncan,

Replication,

Consent decree of May 12, 1880,

Deposition of Maj. Campbell Wallace,

Stipulation as to use of printed copies of State documents as evidence,

Stipulation as to prices of Tennessee Bonds,

Stipulation as to letter of S. Watson,

Stipulation as to taking testimony,

Order of President of the United States,

which have been omitted by mistake in the record as heretofore made up and printed; and that upon filing this stipulation the Clerk shall amend the record on file and the printed copies by making such additions thereto, with like effect as if the matters so added had been originally included in the return made from the Circuit Court—this stipulation being made to avoid the necessity of correcting the record by means of certiorari.

P. HAMILTON.

of Counsel M. & O. R. R. Co.

E. L. ANDREWS,

Solr. for Compts.